(2015) 04 GUJ CK 0061

In the Gujarat High Court

Case No : Tax Appeal No. 259 of 2015 and Civil Application (OJ) No. 325 of 2015 in Tax Appeal No. 259 of 2015

State of Gujarat APPELLANT

Vs

Esdee Paints Ltd. RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Gujarat Value Added Tax Act, 2003 — Section 2(33), 45(6), 47(4A)

Citation : (2015) 04 GUJ CK 0061

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Vacha Desai, AGP, for the Appellant

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad (hereinafter referred to as the "Tribunal") dated 31/07/2014 in Second Appeal No. 1222/2004 by which the learned Tribunal has after following its earlier decision in the case of M/s. T.J. Agro Fertilizers Pvt. Ltd. v. State of Gujarat in Second Appeal Nos. 529 and 530/2000 with Second Appeal NO.1052/2002 has partly allowed the said appeal, the State has preferred the present Tax Appeal with the following proposed substantial questions of law;

"(A) Whether the learned Tribunal is right in law in holding that interest under Section 47(4A) of the Act is not leviable till the date of assessment order?

(B) Whether the learned Tribunal is right in law in reducing penalty levied under Section 45(6) of the Act to 10%?

(C) Whether the learned Tribunal is right in law in deleting levy of purchase tax levied under Section 15B of the Act?"

2. At the outset, it is required to be noted that so far as the impugned judgment

and order passed by the learned Tribunal holding that the interest under Section 47(4A) of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the Act") is not leviable till the date of the assessment order and in reducing the penalty under Section 45(6) of the Act to 10% is concerned, the learned Tribunal has relied upon its earlier judgment in the case of M/s. T.J. Agro Fertilizers Pvt. Ltd. (Supra) and the decision of the learned Tribunal in the case of M/s. T.J. Agro Fertilizers Pvt. Ltd. (Supra) has been confirmed by the Division Bench of this Court vide judgment and order dated 09/04/2015. Under the circumstances, following the decision of the Division Bench of this Court, we answer the proposed question Nos. (A) and (B) in the negative and against the revenue.

2.1 Now so far as the proposed question No. (C) i.e. whether the learned Tribunal is right in law in deleting levy of purchase tax levied under Section 15B of the Act is concerned, it is required to be noted that the Assessing Officer levied the purchase tax of Rs. 7,84,672/-. However, the same has been deleted by the learned Tribunal by the impugned judgment and order by observing that the dealer was holding exemption, being the manufacture of paints, and, therefore, was not required to pay any tax on sale of the goods while holding exemption certificate. Considering the definition of taxable goods under Section 2(33) of the Act, the learned Tribunal has rightly held that the dealer was not liable to pay purchase tax while holding the exemption certificate. Under the circumstances, no error has been committed by the learned Tribunal in deleting the levy of purchase tax of Rs. 7,84,672/- as during the relevant period, the dealer was holding the exemption certificate.

3. In view of the above and for the reasons stated hereinabove, no question of law, much less substantial question of law, arises in the present Tax Appeal and the same deserves to be dismissed and is accordingly dismissed.

CIVIL APPLICATION No. 325/2015

In view of dismissal of the Tax Appeal, no order in the Civil Application and the same stands disposed of accordingly.

